

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WILLIAM L. HICKEY, on behalf of)	
himself and all others similarly)	
situated,)	
)	
Plaintiff,)	
)	Civil Action No. 05-735-JJF
v.)	
)	JURY TRIAL DEMANDED
VERIZON COMMUNICATIONS)	
INC., a Delaware corporation,)	
)	
Defendant.)	

**DEFENDANT'S MOTION TO DISMISS
PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, defendant Verizon Communications Inc. respectfully moves the Court to dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted.

The grounds for the motion are:

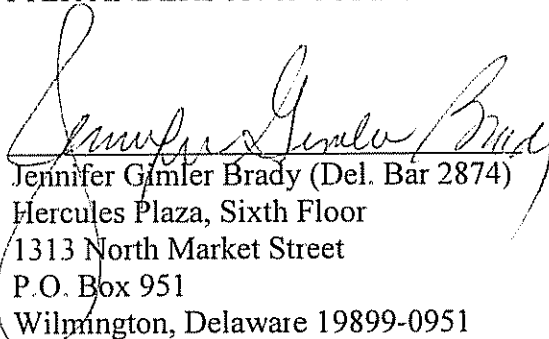
1. ERISA § 502(a)(1)(B) authorizes a plan participant or beneficiary to bring an action to recover "benefits due under the terms of his plan." Hickey's complaint must be dismissed because Hickey is seeking to recover *not* "benefits due under the terms of his plan" but benefits *beyond* the benefits due under the terms of his plan.

2. Hickey has brought this an action under ERISA § 502(a)(1)(B) to remedy an alleged violation of the ADEA. Hickey's complaint must be dismissed because ERISA does not provide a cause of action for a violation of the ADEA.

Verizon's brief in support of its motion to dismiss is being filed contemporaneously herewith.

POTTER ANDERSON & CORROON LLP

By



Jennifer Gamler Brady (Del. Bar 2874)
Hercules Plaza, Sixth Floor
1313 North Market Street
P.O. Box 951
Wilmington, Delaware 19899-0951
(302) 984-6042 – Telephone
(302) 658-1198 – Facsimile
jbrady@potteranderson.com – Email

*Attorneys for Defendant Verizon
Communications Inc.*

OF COUNSEL:

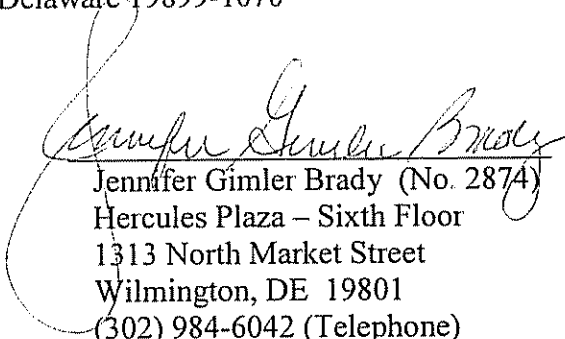
Jeffrey G. Huvelle (admitted *pro hac vice*)
David H. Remes
Elizabeth R. Jungman (admitted *pro hac vice*)
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
(202) 662-6000 – Telephone
(202) 662-6291 – Facsimile
jhuvelle@cov.com – Email
ejungman@cov.com – Email

Dated: January 30, 2006
PA&C-717358v1

CERTIFICATE OF SERVICE

I, Jennifer Gimler Brady, hereby certify this 30th day of January, 2006, that the foregoing **DEFENDANT'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)** was electronically filed with U.S. District Court District of Delaware via CM/ECF (Official Court Electronic Document Filing System) which will send notification of such filing that the document is available for viewing and downloading via CM/ECF to the following counsel of record:

Kevin Gross, Esquire
Rosenthal, Monhait, Gross & Goddess
Mellon Bank Center, Suite 1401
P.O. Box 1070
Wilmington, Delaware 19899-1070



Jennifer Gimler Brady (No. 2874)
Hercules Plaza – Sixth Floor
1313 North Market Street
Wilmington, DE 19801
(302) 984-6042 (Telephone)
(302) 658-1192 (Facsimile)
jbrady@potteranderson.com (Email)